IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8269 of 1995

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREEJI GAS AGENCY

Versus

SANJAY GUPTA COLLECTOR

Appearance:

MR NAGIN N GANDHI for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/03/2004

ORAL JUDGEMENT

1. In the present petition the petitioner has challenged the order dated 4th August 1995, whereby the respondent no.2 has dismissed the appeal of the petitioner confirming the order dated 10th June 1993 passed by the respondent no.2.

2. The respondent no.1 Collector, Bhavnagar has issued show-cause notice dated 31.3.1993 to the petitioner to show cause as to why 188 filled cylinders of liquefied petroleum gas and 79 empty such cylinders both worth Rs.1,38,517.60 should not be confiscated to the State under the provisions of section 6A of the Essential Commodities Act, 1955. Petitioner submitted his reply to the show-cause notice. The respondent no.1 thereafter passed an order dated 10.6.1993, confiscating the gas cylinders. Feeling aggrieved by the said order the petitioner filed an appeal before the State Government. The respondent no.2 by his order dated 4th August 1994, rejected the appeal and confirmed the order of confiscation passed by the respondent no.1. Hence the present petition.

3. The main grievance of the petitioner in this petition is that the Government by Notification dated 27th April 1984, has deleted Liquefied Petroleum Gas (LPG) from the List of Schedule to the Essential Commodities Act, 1955 and therefore the proceedings initiated by the Collector and Deputy Secretary are without jurisdiction.

4. Mr. K.L. Pandya for the State Government has contended that this point was not raised before any of the authority before approaching this Court. It is true that this contention was not raised before any of the authority. It is purely a question of law whether the item is covered under the Essential Commodities Act or not. However, In view of the clear position of law as stated above, especially after a lapse of long time, I do not think it proper to remand the matter back to the concerned authority on this short point. Therefore, in the interest of justice and in view of the Government Notification dated 27th April 1984, the impugned orders are required to be quashed and set aside.

5. In the premises aforesaid, the petition succeeds. The impugned order dated 10.6.1993 at Annexure-B and the impugned order dated 4.8.1995 at Annexure-C are quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

[K.S. JHAVERI, J.]

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